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OPEN MEETING AGENDA ITEM

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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND
POWER DISTRICT, IN CONFORMANCE
WITH THE REQUIREMENTS OF ARIZONA
REVISED STATUTES, SECTION 40-360 et
seq., FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY
AUTHORIZING THE EXPANSION OF THE
COOLIDGE GENERATING STATION, ALL
WITHIN THE CITY OF COOLIDGE, PINAL
COUNTY, ARIZONA.

Docket No. L-00000B-21-0393-00197

RANDOLPH RESIDENTS
BRIEF PURSUANT TO A.R.S. §40-360

Arizona Corporation Commission

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Pursuant to A.R.S. §40-360 and the Corporation Commission's order on February 28, 2022, Dianne Post, Attorney for Randolph Residents, respectfully submits the following Brief regarding the CEC requested by SRP.

INTRODUCTION

Randolph, Arizona is a historic Black community founded in the 1920s primarily by Black people who came from Arkansas and Oklahoma to pick cotton. They were not allowed to buy property in Coolidge so bought five miles outside of town in an agriculturally zoned area. That became Randolph.¹

¹ Le Seur Geta; Not All Okies Are White: The Lives of Black Cotton Pickers in Arizona, University of Missouri, 2000.

1 Fifty years of being ignored and abused by Coolidge, Pinal County, and surrounding
2 industries have left the town diminished from its heyday but still standing as the heart and home
3 of hundreds. The pride of place in their heritage has bolstered the residents to fight for
4 recognition of the historical significance of their town that helped build the cotton industry in
5 Arizona and stands today as a monument to resilience and perseverance. This is a case of first
6 impression for Arizona and should be thoroughly and carefully considered because the
7 ramifications will echo from the past into the future.

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9 The statutory requirements for consideration by the line-siting committee were not met.

10 A.R.S. §40-360.06 specifies what the line-siting committee must examine to determine if
11 the application filed by Salt River Project (SRP) should be granted. The sole question is the
12 environmental compatibility of the site. A review of the statutory requirements and the evidence
13 introduced at the hearing in February 2022 shows clearly that this site is not compatible for the
14 expansion and the impact on the local population was not taken properly into account.

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16 A.R.S. §40-360.06(A)(1) requires that the committee look at not just state and local plans
17 but also private development. Real estate economist Mark Stapp testified that many planned
18 developments exist around the site, but Randolph will be unable to partake in the growth or
19 increase in property value from any of those plans because of the SRP expansion.² These
20 planned developments were not included in the information provided by the applicant to the line-
21 siting committee.

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² 06-02-14-2022 Transcript 71:14 – 72:6 (Stapp) RR Exh 12: CAWS Coolidge Areas map, Kennilworth Garden map, Skousen map.

1 A.R.S. §40-360.06(A)(3) requires that noise emission levels be considered. Randolph
2 resident Ron Jordan testified that the humming noise from the current generators was a problem
3 and that there was high transmission static especially on humid days.³ Dr. Collins studies found
4 that people of African descent were exposed to high levels of light and noise pollution⁴ – exactly
5 a complaint of the residents of Randolph.⁵

6 The applicant did not investigate the actual noise level but only did modeling on
7 increases in noise and declared it barely perceptible.⁶ Yet by looking at SRP Exh. 01 (SRP CEC
8 Application filed with the ACC on December 13, 2021 Exhibit I, page 16, table 12) what the
9 chart says is that it is already loud in Randolph so a little bit more won't hurt. That doesn't help.
10 If you already have unacceptable levels of noise, it is no comfort that they are only going to add
11 just a little bit more.
12

13 The applicant's witness was asked if all 16 turbines were turned on, would people a
14 1,000-feet away hear them.⁷ These turbines are jet engines.⁸ The witness testified it would be
15 "barely perceptible."⁹ Most of us have been at or near an airport sometime in our lives, and one
16 jet engine turning on is quite perceptible.
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23 ³ 05-02-11-2022 Transcript 70:71 71:23 –72:2 (Jordan)

24 ⁴ 04-02-10-2022 Transcript 179:17-181-11 (Collins)

25 ⁵ 05-02-11-2022 Transcript 24:21-22:2 (Moore); 57:4-8, 70:17-19 (Jordan) RR Exh 1 Photographs, #68 of 72 and
Exh 31 Photograph.

⁶ 03-02-09-2022 Transcript 109:13 – 111:17, 113:5-9, 16-23 (Petry)

⁷ 04-02-10-2022 Transcript 33:5-34:6 (Petry)

⁸ 04-02-10-2022 Transcript 33:5-7 (Petry)

⁹ 04-02-10-2022 Transcript 33:5-7 (Petry)

1 Despite Petry's repeated statements under oath that there would be no noise levels above
2 those allowed,¹⁰ he was asked to read aloud his own report¹¹ in which it states: "Estimated noise
3 levels from construction activities at the closest residential receptor center from the center of the
4 construction site were estimated to be approximately 56.8 dBA L and 61.8 dBA L." He was also
5 asked to read CEC application document SRP 1 (I-3) – in which it states: "The projected L value
6 at the closest sensitive receptor, residences south of the Project, is estimated to be 59.7 dBA
7 when no background noise is included and 63.1 dBA when background noise is added, which is
8 above the recommended 24-hour average day and night EPA recommended value of 55.1 dBA
9 L."¹² The impact of noise is a factor that must be considered.

11 The witness tried to excuse the excessive noise level by saying the level was not
12 permanent.¹³ Claiming that an effect is not permanent does not remove it from consideration as
13 the decision maker must look at the cumulative effects. *National Parks Conservation Association*
14 *v. U.S. Forest Service et al.*, 177 F.Supp.3d 1, 24, 26 (2016) The cumulative impact analysis is
15 required to prevent dividing a project into individual actions thus minimizing each individual
16 action's impact when the entire project will have a substantial impact. *National Parks*
17 *Conservation Association v. U.S. Forest Service et al.* That is precisely what Randolph resident
18 Jordan testified about – over the decades heavy industry has been creeping ever closer to
19 Randolph and impacting its environment. The precedential impact of an action must also be
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¹⁰ 04-02-10-2022 Transcript 34-39:2 (Petry)

¹¹ SRP Exh. 01: SRP CEC Application filed with the ACC on December 13, 2021, Exhibit I, page 2

¹² SRP Exh. 01: SRP CEC Application filed with the ACC on December 13, 2021, Exhibit I, page 3

¹³ 04-02-010-2022 Transcript 92:15-25 – 93:4 (Petry)

1 considered (*Hausrath v. U.S. Department of the Air Force*, 491 F. Supp.3d 770, 803 (2020)) but
2 was not here.

3 Construction noise is not permanent because some time the facility will be built – in three
4 years. But any of us who have suffered through a jack hammer in the morning or a leaf blower
5 on Sunday know that is not permanent either, but it doesn't improve our quality of life.

6 Operational noise is not permanent because the turbines are not running 24/7. But it is still an
7 impact that should have been considered. (*Hausrath v. U.S.*) Instead, the applicant's witness
8 testified there would be no noise above EPA recommended levels contrary to his own written
9 report.
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11 A.R.S. §40-360.06(A)(5) requires that scenic areas and historic sites and structures be
12 considered. Chairperson Katz of the line-siting committee took judicial notice that Randolph is a
13 historic location.¹⁴ Randolph resident Ron Jordan has worked on creating a historical museum at
14 his parent's home for the last 15 years.¹⁵ Jordan pointed out one house that had been part of the
15 Japanese internment camps in Central Arizona.¹⁶ These Japanese internment camps and their
16 relics are certainly a historic event in Arizona. Jordan also pointed out that one of the historic
17 houses in Randolph belonged to the Dosty family whose son was a well-known University of
18 Arizona basketball player.¹⁷ Adrienne Hollis explained why it is important to history and to the
19 future to preserve such Black historic towns and that it would be an important asset to Arizona.¹⁸
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24 ¹⁴ 01-02-07-2022 Transcript 13:25 (Katz)

25 ¹⁵ 05-02-11-2022 Transcript 60:7-24 (Jordan) RR Exh 2: Photographs of Randolph #34 of 72, #36 of 72, 05-02-11-
2022 Transcript 63:24 – 70: 19 (Jordan)

¹⁶ RR Exh 1: Photographs of Randolph, 50 of 72; 05-02-11-2022 Transcript 68:6-12 (Jordan)

¹⁷ 05-02-11-2022 Transcript 67:23-68:2 (Jordan)

¹⁸ 07-02-15-2022 Transcript 142:2-143:25 (Hollis)

1 In contrast, the witness for the applicant looked at a long list of articles and resources
2 including Not All Okies are White (Ftn 1) yet found nothing about Randolph that had historical
3 value.¹⁹ The applicant's other historic witness didn't even look at the entire list.²⁰ They
4 considered only railroads, ditches, and roads. The application mentioned Hohokam and O'odom
5 peoples who lived there long ago, but no consideration was given to the people who live there
6 now.²¹

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8 The position of applicant's witness on this issue was astounding. He admitted Randolph
9 had historic value but concluded that the only consideration was whether the expansion would
10 prevent the town from being listed in the Arizona or National list of historic places.²² That is not
11 the proper benchmark. Being listed is important but only a small part of the value of a historic
12 property and is not the only criteria that makes a historic place valuable.

13 A.R.S. §40-360.0(A)(5) also requires consideration of scenic areas. The applicant found
14 no scenic impacts.²³ The residents did. Ron Jordan testified that when the current plant went in,
15 they lost the view of the mountains and everything north i.e. Four Peaks, Pinal Mountains, and
16 snow.²⁴ They lost the beauty of the area to the twelve existing stacks and may lose more. Scenic
17 views add value to property. That was taken from them.
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24 ¹⁹ 04-02-10-2022 Transcript 96:23 – 97:6 (Pollio)

25 ²⁰ 04-02-10-2022 Transcript 94:18-19 (Petry)

²¹ SRP Exh. 01: SRP CEC Application filed with the ACC on December 13, 2021, Exhibit E, page E-7.

²² 04-02-10-2022 Transcript 49:2-10 (Petry)

²³ 03-02-09-0222 Transcript 105:1-5 (Petry) SRP Exh. 01: SRP CEC Application filed with the ACC on December 13, 2021, Exhibit E, pages 3-4

²⁴ 05-02-11-2022 Transcript 58:1-3 (Jordan)

1 The other scenic view that was taken from residents was stargazing.²⁵ Both Randolph
2 residents testified that the light interfered with their sleep.²⁶ Jordan testified that the lights make
3 Randolph look like Mesa but it will look like Phoenix with the expansion.²⁷

4 As with the noise “investigation,” the light “investigation” was also based on modeling.
5 No residents were consulted and while the applicant stated there was no impact from the night
6 lighting, he had never visited the location at night.²⁸ He did testify²⁹ and put in his report a
7 concern about how the lights might impact the bats – but not the people.³⁰ An analysis that
8 focuses only on the impacts on animals but not the impact on humans is flawed and
9 unacceptable. *American Wild Sheep v. U.S. Department of Agriculture*, 681 F.2d 1172, 1178
10 (1982)
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12 A.R.S. §40-360.06(A)(6) requires that the total environment of the area be considered.
13 Professor Stapp, a real estate economist, testified that the land values, already devalued by
14 previous decisions, would decline even further.³¹ Stapp compared home sale prices in old town
15 Coolidge to Randolph from 2005 to date. He found that the average price in Coolidge was
16 \$109,000 and in Randolph was \$98,000. That is a 10% loss for Randolph residents. The studies
17 in RR Ex. 9, 10, and 11 found losses from 1.5% to 8% of value. Stapp’s finding is consistent
18 with those studies.³²
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22 ²⁵ 05-02-11-2022 Transcript 71:6-16 (Jordan)

23 ²⁶ 05-02-11-2022 Transcript 24:21-22:2 (Moore); 70:17-19 (Jordan)

24 ²⁷ 05-02-11-2022 Transcript 57:4-8 (Jordan); RR Exh 1 Photographs, #68 of 72 and RR Exh 31 Photograph

25 ²⁸ 04-02-10-2022 Transcript 40:6-10, 46:16-25 (Petty)

²⁹ 04-02-10-2022 Transcript 96:16-22 (Petty)

³⁰ SRP Exh. 01: SRP CEC Application filed with the ACC on December 13, 2021 Exhibit C-15

³¹ 06-02-14-2022 Transcript 76:1 (Stapp)

³² 06-02-14-2022 Transcript 65:16-66:2; 67:108:14-15; 68:14-17 (Stapp). RR Exh. 9: Davis, L. The Effect of Power Plants on Local Housing Values and Rents. The Review of Economics and Statistics. November 2011, 93(4): 1391–1402; RR Exh. 10: Currie, J. et al. Do Housing Prices Reflect Environmental Health Risks? Evidence From more RANDOLPH RESIDENTS BRIEF PURSUANT TO A.R.S. §40-360 - 7

1 The expansion plant will impact the community by lowering housing values and rent,
2 increasing environmental health risks, and decreasing neighborhood well-being. Yet SRP
3 testified they did no assessment or investigation of such property losses.³³

4 As Stapp testified, lack of investment in the town by the government and business has
5 resulted in extremely disparate conditions for residents of this primarily Black and Hispanic
6 town as opposed to nearby towns populated by primarily Caucasians.³⁴ That is the essence of
7 environmental racism.
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9 The salt in the wound is that SRP does not even supply electricity to Randolph – it all
10 goes to other, mostly white, people.³⁵ Persons of African descent bear all the burden but get none
11 of the benefit.³⁶ Dr. Collins testified to that national pattern replicated here.³⁷ None of the SRP
12 executives ³⁸ or staff ³⁹ live anywhere near the plant. NIMBY (Not in My Back Yard) has come
13 to mean IBPBY (In Black People's Back Yard).
14

15 The total environment evaluation under A.R.S. §40-360.06(A)(6) must also include an
16 analysis of increased health hazards for the residents. A generic claim that environmental justice
17 impacts were considered or simple assertions that there will be a lack of impact on communities
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20 than 1600 Toxic Plant Openings and Closings. National Bureau of Economic Research. Working Paper 18700.
21 <http://www.nber.org/papers/w18700>; RR Exh. #11; Barnett-Howell, Z. et al. On the Road to Recovery? Power Plant
Closures and Neighborhood Well-Being. September 29, 2016.

22 ³³ 02-02-08-2022 Transcript 203:18 – 204:7 (McClellan)

23 ³⁴ 06-02-14-2022 Transcript 72:7, 16-73:10 (Stapp)

24 ³⁵ 01-02-07-2022 Transcript 95:3-5 (Coggins)

25 ³⁶ 06-02-14-2022 Transcript 73:17-74:1 (Stapp)

³⁷ 04-02-10-2022 Transcript 182:2-14 (Collins)

³⁸ 01-02-07-2022 Transcript 98:6-15 (Coggins)

³⁹ 04-02-10-2022 Transcript 97: 3-10 (Pollio) 04-02-10-2022 Transcript 85:22 (Hallows) 04-02-10-2022 Transcript
88:25-89:1 (Rickard) Transcript 93:6 (Petry)

1 of color is insufficient. *California v. Bernhardt*, 472 F.Supp.3d 573, 621-22 (2020) Localized
2 impact on public health for those most affected must be seriously investigated. That did not
3 happen here. The applicant did no research on health or safety impacts at all.⁴⁰

4 Dr. Grineski testified that stress increases the negative impact of pollution resulting in
5 poorer health consequences.⁴¹ She also testified that we must take into consideration the
6 cumulative effects of pollution and stress, not just what is being added but what is already
7 there.⁴²

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9 The Randolph community is already suffering from health risks. SRP testified that the
10 expansion will be a “minor” emitter and over time reduce the pollutants.⁴³ However, in a
11 community already burdened by significant pollution, the expansion will still have a harmful
12 effect on their health and lifestyle and reduce the value of their property. When a cumulative
13 impact analysis is absent, the record is incomplete, and the decision is arbitrary and capricious.
14 *Hausrath v. U.S. Department of the Air Force*, 491 F. Supp.3d 770, 795-6 (2020)

15
16 Dr. Collins described what environmental justice is, what environmental racism is, how
17 the research is done, and what the research has found nationwide.⁴⁴ “The purpose of an
18 environmental justice analysis is to determine whether a project will have a disproportionately
19 adverse effect on minority and low-income populations.” *Allen v. Nat’l Institutes of Health*, 974
20 F. Supp. 2d 18, 47-48 (D. Mass. 2013) Such an analysis must include meaningful input from the
21 public, especially the low-income and minority populations.
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25 ⁴⁰ 04-02-10-2022 Transcript 61:14-21 (Watt)

⁴¹ 04-02-10-2022 Transcript 145:14-146:13 (Grineski)

⁴² 04-02-10-2022 Transcript 146:17-147:9 (Grineski)

⁴³ 04-02-10-2022 Transcript 12:19 – 13:9 (Watt)

⁴⁴ 04-02-10-2022 Transcript 168:6 – 170:14 (Collins)

1 Dr. Collins specifically tied his testimony to this application by the increase of PM_{2.5},
2 PM₁₀, and NO₂. In his review of the literature, he found that people of color suffered
3 disproportionately from these pollutants, Black people particularly. He also found from state-
4 level analysis that for each of these three pollutants, Blacks were disparately located near the
5 pollutants and the disparate impact was notably large in Arizona.⁴⁵

6 Dr. Collins also discussed the study that found that the consumption of goods and
7 services that causes the pollution disproportionately is committed by whites while the pollution
8 exposure caused by producing those goods is disproportionately suffered by people of color,
9 especially Blacks.⁴⁶ Again, this is the essence of environmental racism.

11 Dr. Grineski outlined the health disparities caused by environmental injustice. She
12 testified specifically and in detail about the vulnerability of African Americans to air pollution
13 and she outlined those health hazards that disproportionately impact African Americans:
14 Asthma, heart disease, low pregnancy and birth weight, and COVID. Stress aggravates all these
15 conditions and African Americans are more subject to stress because of discrimination, social
16 exclusion, and low socioeconomic status. It's a cascading effect and we must look at the
17 cumulative impacts.⁴⁷

21 ⁴⁵ 04-02-10-2022 Transcript 176:7-9 (Collins) RR Exh. 14: Liu, J. et al. Disparities in air pollution exposure in the
22 United States by race-ethnicity and income, 1990–2010. Environmental Health Perspectives, 129(12), 127005.
23 (2021).; RR Exh. 15: Tessum, C. W. et al. PM_{2.5} pollutants disproportionately and systemically affect people of
24 color in the United States. Science Advances, 7(18), eabf4491. (2021); RR Exh. 16: Jbaily, A. et al. Air pollution
25 exposure disparities across US population and income groups. Nature, 601(7892), 228-233 (2022)

⁴⁶ 04-02-10-2022 Transcript 178:12 – 179:11 (Collins) RR Exh. 17: Tessum, C. W. et al. Inequity in consumption
of goods and services adds to racial–ethnic disparities in air pollution exposure. Proceedings of the National
Academy of Sciences, 116(13), 6001-6006. (2019)

⁴⁷ 04-02-10-22 Transcript 140:22 – 142:10, 143:2 – 144:8, (Grineski) RR Ex. 19: Gee, G.C. and D.C. Payne
Sturges. Environmental Health Disparities: A Framework Integrating Psychosocial and Environmental Concepts.
Environmental Health Perspectives. 112(17): 1645-1653. (2004); RR Exh. 20: Morello Frosch, et al. Understanding
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1 In addition to health consequences, significant non-health consequences exist such as
2 food and energy insecurity, poor housing stock, job loss, and unsafe communities.⁴⁸

3 Attention to these cumulative impacts is required especially based on past actions. *The*
4 *Saint Paul Branch of the NAACP v. U.S. Department of Transportation*, 764 F. Supp 2d 1092,
5 1102 (2011) The question is whether the present effects of the action will have a continuing,
6 additive, and significant relationship to worsening prior impacts. Dr. Grineski testified to
7 precisely that. If this expansion plant is added to the burden the residents of Randolph already
8 carry from the existing plant and surrounding industries, the impact on their health and well-
9 being will be harmful. When the African American community surrounding the plant (Randolph)
10 would be disproportionately burdened with air pollution in an area that already bears a high level
11 of industrial pollution, environmental justice claims require serious attention. *In the Matter of*
12 *Shintech Inc. et al, U.S. EPA*, Permit # 2466-2468 p. 7 (Louisiana, 1997)
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14 Dr. Malin highlighted methane, a worse greenhouse gas than carbon dioxide, that is
15 released by the process of using natural gas. She testified that the leaks of methane from natural
16 gas wells and pipelines have significant global warming potential.⁴⁹ She also highlighted that
17 people of color suffer a higher burden of environmental pollution, including mental health and
18 depression, impacts on children, and long-term damage on genetics and the fetus in utero.⁵⁰
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22 The Cumulative Impacts Of Inequalities In Environmental Health: Implications For Policy. Health Affairs. 30(5):
23 879-887. (2011). <https://pubmed.ncbi.nlm.nih.gov/21555471/>

24 ⁴⁸ 07-02-15-2022 Transcript 138:7-22 (Hollis)

25 ⁴⁹ 06-02-14-2022 Transcript 39:6-21, 44:8-45:2, 45:11-46:17; (Malin)

⁵⁰ 06-02-14-2022 Transcript 39:21-24, 42:3- 43:21 and 47:4-9; 48:2-11 (Malin) RR Exh. 22: Perera, F. Pollution from Fossil-Fuel Combustion is the Leading Environmental Threat to Global Pediatric Health and equity: Solutions Exist. International Journal of Environmental Research and Public Health. 2018, 15, 16.; RR Exh. 23: Mohai, P. et RANDOLPH RESIDENTSBRIEF PURSUANT TO A.R.S.§40-360 - 11

1 Dagny Signorelli, an air quality expert who worked for Pinal County Air Quality Control
2 Department, highlighted that this is a significant problem for Arizona and especially for Pinal
3 County.⁵¹ The air quality in western Pinal County is in nonattainment and Pinal County is the
4 second worst county in the country for these particulates.⁵² The high temperatures and wind
5 patterns make it particularly bad.

6 Disproportionate exposure to heat is a result of systemic racism and has been linked to
7 the discriminatory practice of redlining as occurred here (see page 1, line 20-23 and Ftn 1).

8 According to the American Economic Journal, without air conditioning, a 1-degree Fahrenheit
9 increase in a school can reduce that year's learning by one percent. Hot school days
10 disproportionately impact minority students, and account for around five percent of the racial
11 achievement gap.⁵³ We should not be adding more pepper to this stew.

12 A.R.S. §40-360.06(A)(9) mandates consideration of additional factors under applicable federal
13 and state laws.

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16 **Discrimination is such a factor that must be considered.**
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19 al. Environmental Justice. Annual Review of Environment and Resources. 2009. 34:405-30; RR Exh. 24: American
20 Public Health Association. The Lancet Countdown on Health and Climate Change: Policy Brief for the United
21 States of America. December 2020; RR Exh. 25: American Public Health Association. The Lancet Countdown on
22 Health and Climate Change: Policy Brief for the United States of America, Appendix. December 2020; RR Exh. 26:
23 Roohani, Y. et al. Impact of Natural Gas Development in the Marcellus and Utica Shales on Regional Ozone and
24 Fine Particulate Matter Levels. Atmospheric Environment. 155 (2017) 11-20; RR Exh. 27: Malin, S. Depressed
25 Democracy, Environmental Injustice: Exploring the Negative Mental Health Implications of Unconventional Oil and
Gas Production in the United States. Energy Research and Social Science. 70 (2020)

⁵¹ 06-02-14-2022 Transcript 12:5-14 (Signorelli)

⁵² 06-02-14-2022 Transcript 13:8-12 (Signorelli) 06-02-14-2022 Transcript 14:17-15:4 (Signorelli) RR Exh. 29:
Arizona State University. Extreme Weather, Climate and Health: Synthesis Report 2015; RR Exh. 30: Webb, E. et
al. Potential hazards of air pollutant emissions from unconventional oil and natural gas operations on the respiratory
health of children and infants. Reviews on Environmental Health, 31(2), 225-243. (2016)
<https://doi.org/10.1515/reveh-2014-0070>

⁵³ Park, R. Jisung, Joshua Goodman, Michael Hurwitz, and Jonathan Smith. 2020. "Heat and Learning." American
Economic Journal: Economic Policy, 12 (2): 306-39. DOI: 10.1257/pol.20180612

1 Randolph resident Melvin Moore was a deputy sheriff in Pinal County for 26 years. He
2 testified that in all his travels around Pinal County, he never saw another town ringed by industry
3 like Randolph.⁵⁴

4 Another example of discrimination is the failure to consult with the residents of
5 Randolph. The applicant testified about their “robust” activities with the residents closest to and
6 most impacted by the plant.⁵⁵ The residents don’t think so. Melvin Moore was the “unofficial
7 mayor” of Randolph for 30-years, but he has never been consulted by SRP nor did he get notice
8 of this planned expansion.⁵⁶

9
10 Ron Jordan said he got a letter only at his Casa Grande home.⁵⁷ But many residents knew
11 nothing about it and would not go to a meeting at 11-mile Corner.⁵⁸ As Committee member
12 Gentles pointed out – official meetings were held in Casa Grande and in Coolidge but only an
13 unofficial meeting in Randolph, the place most impacted.⁵⁹

14 Ron Jordan outlined the injustices over the years from Pinal County, Coolidge, industrial
15 encroachment, and SRP.⁶⁰ Ron attended the public hearings⁶¹ and told the applicant that the
16 town needed fire hydrants, streetlights, internet access, paved streets and drainage, and that
17 elders needed help with electric bills.
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23 ⁵⁴ 05-02-11-2022 Transcript 29:17 (Moore)

24 ⁵⁵ 03-02-09-2022 Transcript 58:14 (Hallows), 62:20 & 63:13 (Rickard)

25 ⁵⁶ 05-02-11-2022 Transcript 23:1-3, 12-14; 24:18-20 (Moore)

⁵⁷ 05-02-11-2022 Transcript 73:12-15 (Jordan)

⁵⁸ 05-02-11-2022 Transcript 78:20-79:9 (Jordan)

⁵⁹ 03-02-09-2022 Transcript 53:14 – 56:10 (Hallows); 08-02-16-2022 Transcript 22-23 (Gentles)

⁶⁰ 05-02-11-2022 Transcript 46:16-21 to 51:8 (Jordan)

⁶¹ 05-02-11-2022 Transcript 80:22-82:1 (Jordan)

1 Yet, what the applicant offered just before the hearing ⁶² was Juneteenth celebration
2 assistance, general town clean up, to trim the few trees in Randolph, and dumpsters, no dumping
3 signs, and trash pick-up – all of which they already have. The intervenors considered this offer
4 not serious nor responsive to the community.⁶³

5 The intervenors rejected the SRP “offer” because they don’t want charity. They don’t
6 want a food box from United Way. They want equality and inclusion. They want control over
7 their own lives. Melvin Moore made that clear – “I’ve served my country, I’ve served my
8 community, I think I should have a say on what I can do and what I can’t do.”⁶⁴

10 Rickard showed pretty slides about the applicant’s outreach and community work but
11 admitted they have never provided funding to Randolph and did nothing until just before the
12 hearing after the residents had intervened.⁶⁵ If the residents had not gotten an attorney and
13 intervened in this matter, would there have been any “offer” at all? SRP proposed to create a
14 community group but only after the expansion was already approved by their board, the
15 application had been filed at the Corporation Commission, and the Residents intervened.⁶⁶ That
16 is why the Corporation Commission cannot rely on an intervenor to bring these issues to the fore.
17 *Calvert Cliffs’ Coordinating Committee, Inc., et al v. United States Atomic Energy Commission*,
18 449 F.2d 1109, 1118 (1971). Had the residents not intervened, the issues discussed above would
19 never have been considered. The duty remains with the applicant to analyze all factors in the
20 statute for the line-siting committee to consider.
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25 ⁶² 04-02-10-2022 Transcript 86:4-15 (Hallows)

⁶³ 05-02-11-2022 Transcript 75:5-76:17; 77:1-14 (Jordan)

⁶⁴ 05-02-11-2022 Transcript 26:13-27:12 (Moore)

⁶⁵ 04-02-10-2022 Transcript 87:2-6 (Rickard)

⁶⁶ 04-02-10-2022 Transcript 110:24-111:7 (Rickard)

1 The expansion is set to cost nearly a billion dollars. Applicant testified that the employee
2 fund for donations was \$1.6 million,⁶⁷ the SRP budget is \$1.8 million for basic needs,⁶⁸ SRP
3 spent \$4.1 million on total “giving”⁶⁹ but only spent \$100,000 in Pinal County where they are
4 located.⁷⁰ This “offer” to Randolph would cost approximately \$10,000.⁷¹ This paltry offer
5 illustrates how African American communities and white communities are treated differently. In
6 SRP CEC Case No. 105, Docket No. L-00000B-00-0105, Decision No. 63611, dated May 1,
7 2001, SPR committed to many specific conditions including spending \$330,000 for school buses
8 in Gilbert, \$400,000 for a transportation study, new street sweepers in Gilbert to reduce PM10
9 pollution, and to set up a continuous fund to ensure that the working group agreements come to
10 fruition.
11

12 Randolph resident Jordan also pointed out that though he went to several meetings about
13 the plant expansion, it appeared to be a fait accompli not a consultation with the community.⁷²
14 The decision was announced in August; the plans were approved in September; the first open
15 house in Randolph was October.⁷³ The applicant was informing the residents of the decision not
16 asking for their input. This became apparent when SRP testified that public input resulted in no
17 changes to the application.⁷⁴
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23 ⁶⁷ 03-02-09-2022 Transcript 64:23 (Rickard)

24 ⁶⁸ 03-02-09-2022 Transcript 78:4-5 (Rickard)

25 ⁶⁹ 04-02-10-2022 Transcript 21:12-14 (Rickard)

⁷⁰ 03-02-09-2022 Transcript 77:15-16 (Rickard)

⁷¹ 04-02-10-2022 Transcript 27:2-4 (Rickard)

⁷² 05-02-11-2022 Transcript 80:22 -82:1, 83:10-17 (Jordan)

⁷³ 04-02-10-2022 Transcript 84:22 – 85:9 (Hallows)

⁷⁴ 04-02-10-2022 Transcript 17:24-18:1 (Hallows)

1 The applicant testified that the people at the open houses were overwhelmingly for the
2 plant.⁷⁵ But when she read the seven written responses from one open house, six were opposed.
3 Five of those were from Randolph. The only person for it was not from Randolph.⁷⁶ The 182
4 signed petitions opposing the expansion show this is not just one person's idea.⁷⁷ Jordan testified
5 that about 150 people live in Randolph full time.⁷⁸ Opposition to the expansion is a nearly
6 universal position among the residents.

7
8 Those who sent letters on behalf of governmental entities, organizations or unions were
9 for the plant.⁷⁹ But they don't live in Randolph. They are not individuals faced with the result of
10 their actions. It is easy to be for something that is not in your back yard. Why were the words of
11 those outside Randolph considered but not the words of those who live in Randolph?

12 Environmental racism is discrimination in new language. *Jersey Heights Neighborhood*
13 *Association v. Glendening*, 174 F.3d 180, 195 (4th Circuit, 1999) Discrimination is in violation of
14 the 14th Amendment equal protection guarantees and the Civil Rights Statutes 42 U.S.C. 2000d
15 and 42 U.S.C. 1983-1985. A spate of cases was set off in 1971 after *Hawkins v. Town of Shaw*,
16 437 F.2d 1286, 1288 (5th Cir. 1971), aff'd on reh'g, 461 F.2d 1171 (5th Cir. 1972) (en banc). The
17 Fifth Circuit found that these troubling discrepancies constituted a violation of the Equal
18 Protection Clause. See *id.* at 1171, 1291; see also *Dowdell v. City of Apopka*, 698 F.2d 1181
19 (11th Cir. 1983) (discrimination in street paving, water distribution and storm drainage); *United*
20 *Farmworkers of Florida Hous. Project, Inc. v. City of Delray Beach*, 493 F.2d 799 (5th Cir.

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25 ⁷⁵ 03-02-09-2022 Transcript 51:7-11 (Hallows)

⁷⁶ 04-02-10-2022 Transcript 75:3 - 80:17 (Hallows)

⁷⁷ RR Ex. 1

⁷⁸ 05-02-11-2022 Transcript 96:3-6 (Jordan)

⁷⁹ 04-02-10-2022 Transcript 80:19 - 81:1 (Hallows)

1 1974) (city officials had deprived farmworkers of equal protection of law by refusing to extend
2 water and sewage service to proposed federally funded low income housing project); *Baker v.*
3 *City of Kissimmee*, 645 F. Supp. 571 (M.D. Fla. 1986) (intentional discrimination against African
4 Americans by failing to provide equal municipal services of street paving, resurfacing, and
5 maintenance); *Ammons v. Dade City*, 594 F. Supp. 1274 (M.D. Fla. 1984), aff'd, 783 F.2d 982
6 (11th Cir. 1986) (granting injunctive and declaratory relief on civil rights claim by African
7 American residents who were denied equal services of street paving, street resurfacing and
8 maintenance, and storm water drainage facilities on the basis of race); *Johnson v. City of*
9 *Arcadia*, 450 F. Supp. 1363 (M.D. Fla. 1978) (discrimination in street paving, parks and water
10 supply); *Selmont Improvement Ass'n v. Dallas County Comm'n*, 339 F. Supp. 477 (S.D. Ala.
11 1972) (failure to pave roads in African American communities).

12
13 Though SRP may argue that they are not a state agency, state action is present when a
14 state agency like the Corporation Commission issues a permit. *Bean v. Southwestern Waste*
15 *Management Corp*, 482 F. Supp 673, 676 (S.D. Tex. 1979) A state agency must not put its stamp
16 of approval on a discriminatory practice or policy even if it did not initiate the practice or policy.
17 *Shelley v. Kraemer*, 334 U.S. 1, 23, 68 S. Ct. 836, 92 L. Ed. 1161 (1948). Governmental policies
18 and practices that may appear neutral on their face but that have a disparate effect on the
19 minority community are discriminatory.

20
21 While the Supreme Court in *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) held that
22 intentional action must be proven by an individual plaintiff, disproportionate impact may be
23 probative of intent to discriminate and in some cases sufficient to prove intent. *Washington v.*
24 *Davis*, 426 U.S. 229, 266, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976). Disproportionate impact may
25 also be sufficient if the claim is brought by an agency. Statistical proof coupled with a historical

1 showing of broad-based racial discrimination may satisfy the burden of proving the intent
2 requirement. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S.
3 252, 264-268, 97 S. Ct. 555, 50 L.Ed.2d 450 (1977)

4 **Environmental justice must be considered under A.R.S. §40-360.06(A)(9).**

5 Dr. Collins testified⁸⁰ that environmental justice is the fair treatment and meaningful
6 involvement of all people regardless of race, color, national origin, income, or sex with respect to
7 the development, implementation, and enforcement of environmental laws, regulations, and
8 policies www.epa.gov That did not happen in this case.
9

10 The definition of environmental injustice is complex, but it does not require that the
11 action be intentional, neglect or malign. It can be structural for example the change from
12 agricultural to industrial zoning in 2008.⁸¹ It can have disparate outcomes for example Moore's
13 testimony that Randolph is the only town in Pinal County ringed by heavy industry. The
14 intervenors argue that Randolph was targeted because of its vulnerable population. Intent is not
15 the issue; outcome is.
16

17 When environmental issues are controversial, those challenging the permit must show a
18 scientific dispute as was done here and how these issues affect the minority population. The
19 analysis by the applicant must cover both construction and operation and include probabilities of
20 an accident and the potential result to properly consider the environmental justice implications.
21 *Standing Rock Sioux Tribe, et al., v. U.S. Army Corps of Engineers, et al.*, 255 F.Supp.3d 101,
22 133 (2017) The Randolph intervenors testified about the gas line explosion that occurred in
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25

⁸⁰ 04-02-10-2022 Transcript 167:17-168:3 (Collins)

⁸¹ 03-02-09-2022 Transcript 87:11-13 (Pollio)

1 Randolph in August 2021 and their fear of that.⁸² Applicants took no heed of that fear⁸³ and did
2 no analysis of the possibility of an accident or its potential impact.

3 Contrary to the applicant's paid consultant who looked at both the EJSCREEN and the
4 EPA Toolkit and found no problem,⁸⁴ Dr. Collins was very clear that this case is an example of
5 environmental injustice⁸⁵ as was committee member Gentles.⁸⁶ Randolph did not come to the
6 plant. The plant came to Randolph – right up to its door.⁸⁷

7
8 In a 2012 case, the EPA acknowledged that because the area immediately surrounding the
9 plant is home to a high density of low-income and minority populations and industrial activity,
10 focused attention must be given to compliance. EPA ORDER ON PETITION NO. V-2011-2, *In*
11 *the Matter of United States Steel Corp. – Granite City Work 6* (Dec. 3, 2012),
12 https://www.epa.gov/sites/production/files/201508/documents/uss_2nd_response2009.pdf

13 Such focused attention is required in this case in light of the environmental justice concerns and
14 the abuses of government power that have obscured the voices and interests of the population
15 most affected by the existing and the proposed expansion plant.
16

17 No doubt exists that this case presents an environmental justice question. When one side
18 puts on experts alleging a particular impact of the action and another side alleges no such impact,
19 that is a controversy that requires investigation and consideration. In this case, witnesses for
20
21
22

23 ⁸² 05-02-11-2022 Transcript 85:1-18 (Jordan)

24 ⁸³ 01-02-07-2022 Transcript 95:8-96:5 (Coggins)

25 ⁸⁴ 03-02-09-2022 Transcript 142:5-6,18-20 (Pollio)

⁸⁵ 04-02-10-2022 Transcript 182:20-14 (Collins)

⁸⁶ 08-02-16-2022 Transcript 224:1-7 (Gentles)

⁸⁷ 02-02-08-2022 Transcript 53:10-12 (McClellan)

1 Randolph intervenors outlined numerous studies and data that showed the negative health and
2 cultural impacts on the residents. SRP admitted they never did a health assessment analysis at all
3 (Ftn. 40). Thus the evidence weighs only on the side of the residents. *American Wild Sheep v.*
4 *U.S. Department of Agriculture*, 681 F.2d 1172, 1178 (1982)

5 **Public testimony must be fairly considered under (A)(9) or the law is a sham.**

6 Public testimony in this case has been overwhelmingly against the permit. Refusing to
7 credit the public testimony makes a sham of the law. *Colonias Development Council, v. Rhino*
8 *Environmental Services Inc.*, 117 P.3d 939 (¶10) (2005) If that testimony is to be ignored, why
9 have it at all?

11 While A.R.S. §40-113(A)(4) and A.R.S. §30-807(A)(4) are targeted at electric
12 competition information, the language makes clear that the legislative intent is to ensure that
13 public comment is solicited especially with targeted efforts to reach rural, low income, elderly,
14 non-English speaking, persons with disabilities, minorities, and at-risk populations. Such
15 comments must be fairly considered. *Colonias Development Council* (¶11) Ordinary concerns
16 about a community's quality of life must be given much weight in the decision making. *Colonias*
17 (¶24) The impact on the community is highly relevant *Colonias* (¶30) "[I]t is not an
18 amorphous general welfare issue, but an environmental problem. ... well within the boundaries
19 of environmental protection." *Colonias* (¶32) The considerations include public nuisance or
20 potential hazard to public health, welfare, or the environment. *Colonias* (¶34). Imposing
21 conditions is not the only recourse. *Colonias* (¶40). There must be a reasoned explanation why
22 the concerns of the Randolph community were ignored. *Colonias* (¶41) Without that, the
23 decision is arbitrary and capricious.

1 The Randolph residents have not and will not benefit from the expanded plant. Both
2 residents who testified pointed out that residents don't get the jobs in construction or in the
3 plant.⁸⁸ SRP admitted that they had no program to train residents to be operators or maintenance
4 professionals.⁸⁹ Society as a whole, both human and national, short and long-term effects, the
5 affected region and interests, must all be investigated. *Hausrath v. U.S. Department of the Air*
6 *Force*, 491 F. Supp.3d 770, 801 (2020) Endangered people are at least as important as
7 endangered animals and plants.

8
9 **The line-siting committee decision is arbitrary and capricious and thus violates the law.**

10 When a matter is as controversial as this and when serious doubt has been cast about the
11 adequacy of the applicant's methodology and data (noise and light), or the absence of data
12 (health assessment, property value loss, historic value), this is not a simple disagreement of he
13 said/she said, but a failure of reasoned conclusions making the decision arbitrary and capricious.
14 The Commission's role as the elected representatives of the public does not permit it to act as an
15 umpire passively calling balls and strikes for adversaries appearing before it; the rights of the
16 public must receive active and affirmative protection at the hands of the Commission. *Save*
17 *Ourselves, Inc. v. Louisiana Environmental Control Com'n*, 452 So.2d 1152, 1157 (La. 1984)
18 Substantial questions about the degradation of human environmental factors must be
19 investigated. *National Parks & Conservation Association v. Babbitt et al.*, 241 F.3d 722, 730-31,
20 736 (9th Cir. 2001) Without a reasoned rational basis for issuing the permit in the face of the
21 testimony about the harm to Randolph residents, the decision is arbitrary and capricious.
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⁸⁸ 05-02-11-2022 Transcript 23:15-18 (Moore) 77:15-21 (Jordan)

⁸⁹ 02-02-08-2022 Transcript 203:7-12 (McClellan)

1 *Vecinos Para El Bienestar De La Comunidad Costera v. Federal Energy Regulatory*
2 *Commission*, 6 F.4th 1321, 1330 (D.C. Circuit 2021)

3 The meaning of arbitrary and capricious in Arizona law is outlined in A.R.S. §12-910(F)
4 and (G): The court shall affirm the agency action unless the court concludes that the agency's
5 action is contrary to law, is not supported by substantial evidence, is arbitrary and capricious or
6 is an abuse of discretion. Under statutory interpretation rules, to give every word meaning,
7 “arbitrary and capricious” must be different from substantial evidence or an abuse of discretion.

8
9 *County of Cochise v. Faria*, 221 Ariz. 619, 212 P.3d 957 (App. 2009) The legal determination of
10 an agency as opposed to the factual determination is determined *de novo*, *Wales v. Arizona*
11 *Corporation Commission*, 249 Ariz. 263 468 P.3d 1224, 1229, ¶19 (2020)

12 The definition of “arbitrary and capricious” means unreasoning action, without
13 consideration and in disregard for facts and circumstances. *Tucson Public Schools v. Green*, 17
14 Ariz. App 91, 495 P.2d 861, 864 (1972); *Johnson v. Mofford*, 193 Ariz. 540, 975 P.2d 130, ¶16
15 (1999) A rational connection must be explicitly made between the facts and the choices. If a
16 factor intended to be relied on is completely ignored, (like the health assessment for the
17 residents, the loss of property value, and the historic value of Randolph) the decision will be
18 arbitrary and capricious. If the agency acts contrary to the legislative intent, (by not taking public
19 comment seriously) no deference is given to the agency decision. *Sanderson Lincoln Mercury,*
20 *Inc., v. Ford Motor Company*, 68 P.3d 428, 205 Ariz. 202 ¶8 (2003)

21
22 The U.S. Supreme Court has also defined “arbitrary and capricious,” *Motor Vehicle*
23 *Manufacturers Association of United States, Inc v. State Farm Mutual Automobile Insurance*
24 *Company Consumer Alert v. State Farm Mutual Automobile Insurance Company United States*
25 *Department of Transportation v. State Farm Mutual Automobile Insurance Company*, 463 U.S.

1 29, 46, 103 S.Ct. 2856, 77 L.Ed.2d 443 (1983). The court held that since the agency did not
2 present an adequate basis and explanation for its action, it was arbitrary and capricious. If the
3 agency gives no consideration to what must be considered under the law, as happened here, or
4 fails to articulate a satisfactory rationale for its actions including a rational connection between
5 the facts and the choices, as happened here, that decision is arbitrary and capricious. The court
6 must ascertain if the decision was based on consideration of the relevant factors and whether
7 there has been an error of judgment. *Judulang v. Holder*, 565 U.S. 42, 132 S. Ct. 476, 484
8 (2011) The Corporation Commission cannot supply that reasoned basis for the decision since the
9 line-siting committee did not do it.

10
11 The statutory requirement of A.R.S. §40-360.07(B) to balance needs and impact in the broad
12 public interest has not been met.

13 A.R.S. §40-360.07(B) requires that not only must the Commission consider all the factors
14 in A.R.S. §40-360.06, but must also balance, in the broad public interest, the need for an
15 adequate, economical, and reliable supply of electric power with the desire to minimize the effect
16 on the environment and ecology of this state. That balancing, with short and long-term impacts
17 has not been fairly done either for the public comments or the Randolph intervenors.

18
19 The Randolph intervenors have been forced to bring these issues to the committee and
20 thus to the Commission. Committee member Gentles pointed out repeatedly how these issues
21 were considered in the Gilbert case (Decision 63611 *infra*) but not in this case.⁹⁰ Without
22 consideration of these impacts, the application is inadequate and cannot be granted.
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⁹⁰ 08-02-16-2022 Transcript 112:24-113:6; 115:11-19; 116:19; 122:214-115; 129:18; 135:20; 136:2; 139:25-140:5;
141:18; 147:3-4; 167:25-168:8; 182:21; 184:4-11 (Gentles)
RANDOLPH RESIDENTSBRIEF PURSUANT TO A.R.S. §40-360 - 23

1 It is an injury in fact when those impacted show that the proposed action will make life
2 less enjoyable which is precisely what Randolph resident Jordan testified to. The court held that
3 pleasures such as photography, fishing, and watching marine life is sufficient to prove an injury
4 in fact. *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 484 (9th Circuit, 2011)
5 Jordan testified to the loss of his families stargazing, being able to sit outside and use the back
6 yard, and the presence of constant humming from the generators – all of which show an injury in
7 fact. While the applicant’s paid consultant found no environmental injustice, the residents did,
8 Dr. Collins did, and committee member Gentles found that statement absurd. The applicant must
9 look at the combined and synergistic impacts. Failing to consider the injustice is arbitrary and
10 capricious. *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 484 (9th Circuit, 2011)
11

12 If the applicant does not put all issues in the application, the line-siting committee cannot
13 consider them as required by statute, and thus the Commission is precluded from applying the
14 proper balance. The failure of the applicant to make any “offer” until after the residents had
15 obtained counsel and intervened illustrates why the Commission cannot rely on intervenors to
16 bring necessary issues to the process. *Calvert Cliffs’ Coordinating Committee, Inc., et al v.*
17 *United States Atomic Energy Commission, supra* The Randolph intervenors could not hope to
18 equal the resources of the applicant and most such vulnerable groups have no way to obtain an
19 attorney or to intervene.
20

21 It remains the responsibility of the applicant to do the research on the factors in A.R.S.
22 §40-360.06 not the intervenor. The line-siting committee does not do independent research or
23 investigate. If a decision is reached without individualized consideration and balancing of
24 environmental factors fully and in good faith, the courts must reverse. *In the matter of*
25 *RUBICON, Inc.*, 670 S.2d 475, 483 (1996)

1 Based on the failure of thorough analysis of all the statutory factors by the applicant, the
2 line-siting committee could not consider all the required statutory factors. Therefore, the
3 Corporation Commission must deny this application.

4 When balancing under A.R.S. §40-360.07(B), the Randolph intervenors' interests are not
5 the same as the public interest and must be given more weight than the general public. *Baptiste v.*
6 *Bethlehem Landfill Co.*, 965 F.3d 214, 221, 224 (3rd Cir. 2020) The Baptistes argued that they
7 could vindicate their right to use and enjoy their home and obtain the full value of their property.
8 These personal rights are qualitatively different than the general, non-possessory right to clean
9 air held in common with the community at large. The alleged harm caused by the infringement
10 of these personal rights is also quantifiably larger than the harm caused by the interference with
11 the general right to clean air. These injuries are above and beyond any injury to the public
12 because they involve private property damages that the public at large has not endured. The
13 Randolph intervenors cannot be conflated with the general public on the health harms, the noise,
14 light, and air pollution claims, the loss of home value, or the loss of lifestyle i.e. scenic view and
15 historic value.
16
17

18 In New Mexico the state proposed to put another landfill close to Chaparral, an
19 unincorporated community consisting most of low-income, minority residents that lacked
20 infrastructure, political representation, and medical facilities - like Randolph. *Colonias*
21 *Development Council, v. Rhino Environmental Services Inc.*, 117 P.3d 939, 943, ¶4 (2005) Many
22 of the people who lived in Chaparral choose to do so because they did not desire city life. ¶5
23
24
25

1 Randolph resident Melvin Moore testified to that precise reason for staying in Randolph.⁹¹ Both
2 residents, Moore and Jordan, talked about why they loved Randolph⁹² just as the people of
3 Chaparral did – they want clean air, clean water, and a better life for their children. Chaparral
4 residents complained of dust, noise, traffic, and pollution, just as Randolph residents did. But
5 Chaparral was and Randolph is being overrun with industrial sites and turned into a dumping
6 ground. As one Chaparral witness testified, the cumulative effect would be to stigmatize the
7 community that has already been inequitably burdened by poverty and pollution thus hampering
8 its ability to develop – like Randolph.
9

10 But the hearing officer in Chaparral ignored those concerns about quality of life and
11 granted the permit which the court reversed ruling that quality of life and the environment for
12 humans is very much a consideration. Like New Mexico, the Arizona Corporation Commission
13 is elected to represent the people, not the corporations, and you must do the same for the people
14 – reverse the line-siting committee decision.
15

16 In the required balancing, the Randolph residents should carry a lot of weight. They have
17 been carrying the weight for decades, indeed centuries. Instead, they were ignored until they
18 intervened. But a vulnerable community should not have to find a lawyer and intervene – the
19 Corporation Commission is elected to represent that community as well as all others. When the
20 Randolph residents' rights are fairly balanced, the application is not in the public interest and
21 should be denied.
22
23
24
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⁹¹ 05-02-11-2022 Transcript 26:16-27:1, 8-12 (Moore)

⁹² 05-02-22-2022 Transcript 18:18-25 (Moore) 32:3-16 (Jordan)

1 CONCLUSION

2 This case is a heartbreaking and a heartwarming story of resilience after continued
3 assaults on a small African American community that have left it damaged, and the lives of its
4 members devalued. Residents suffer from health and air quality issues, noise and light pollution,
5 traffic, and bad roads. They have seen their land values drop along with their wealth that they
6 worked hard for all their lives. They see their historical community damaged repeatedly for
7 profit for someone else.
8

9 Yet they don't benefit from the industry. They don't get the jobs. They don't get the tax
10 benefits. They don't even get the electricity. There is a Black saying – make a way out of no
11 way. That is what Blacks have done for centuries in this country. They had a thriving community
12 as Ron testified.⁹³ It was destroyed by white encroachment, like Rosewood Fl, like Greenwood
13 OK. What we see here, as we have seen many times before, is a powerful entity destroying what
14 Black communities have built.
15

16 The Randolph intervenors are standing here today, asking for justice from you. They are
17 asking you to protect the lives, property, and community of Blacks, Hispanics, and Native
18 Americans in Randolph who have struggled for decades. This plant should not be expanded. The
19 certificate should be denied. Damages cannot adequately compensate for this type of injury.
20

21 If you approve the expansion, the residents must receive compensation for their losses
22 which you have the power to do by issuing conditions for the public interest. A.R.S. §40-282(C)
23 & A.R.S. §40-207(B). The residents must receive relocation assistance if they choose to leave.
24
25

⁹³ 05-02-11-2022 Transcript 18:18-19:2 (Jordan)

1 They must receive infrastructure development if they choose to stay. They must receive
2 amelioration of the harms this plant will bring to them and their children and grandchildren.
3 However, to evaluate any mitigation measures for the Randolph community, the measures must
4 be developed to a reasonable degree not left to a perfunctory listing. The conditions should be in
5 writing, enforceable, and reviewed regularly. *National Parks & Conservation Association v.*
6 *Babbitt et al.*, 241 F.3d 722, 730-31, 736 (9th Cir. 2001) The failure of the applicant to consider
7 those measures and the fast track of this application prevented the development and
8 memorialization of any such mitigation measures as was done in the Gilbert case; thus the
9 application must be denied.
10

11 As the applicant did in the Gilbert case (Decision 63611 *supra*), they can contribute to a
12 fund to achieve this amelioration and ensure economic development. They can put solar panels
13 on the houses to increase renewables and cut down on residents electric bills; they can put in
14 insulated windows and doors to cut down on the noise and heat; they can install custom insulated
15 blackout drapes to counter the light-pollution; they can install smart thermostats to reduce
16 electric bills; they can install retractable awnings to mitigate summer heat; and they can expand
17 their reliable internet to Randolph that has only spotty coverage to mention just a few of the
18 many possible steps that could be taken. Randolph intervenors ask that you deny the permit
19 based on the violation of the statutory factors and the failure of proper balancing. Barring that,
20 they ask that the residents receive adequate compensation and amelioration measures for the
21 hardships they have endured and will endure should this plant expansion proceed.
22
23

24 RESPECTFULLY SUBMITTED THIS 14th day of March 2022.

25 

By _____
Dianne Post (006141)

ORIGINAL and 13 copies of the foregoing
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